

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Atlanta District Office

ALBERT D. BELL,

Complainant,

v.

Honorable JOHN MCHUGH,

Secretary, Department of the Army,

Agency.

EEOC No. 410-2010-00429X

(Agency No.  
ARFTMCPH09DEC05653)

PHILIP DAVI

Supervisory Administrative Judge

MOTION TO AMEND COMPLAINT

COMES NOW ALBERT D. BELL, Complainant in the above styled matter, by and through his undersigned counsel, and pursuant to 29 C.F.R. § 1614.106(d) and the Federal EEO Complaint Processing Procedures in paragraph D and Section VIII of the August 11, 2010, Acknowledgment and Order in this case, moves the Court to Amend his Complaint to add additional claims of reprisal by the Commander, United States Army Criminal Investigation Command (USACIDC). The Amended Complaint will set forth multiple acts of harassment and attempted intimidation directed against Complainant and his witnesses. Accordingly, his case should be amended to include issues/and or claims like or related to those raised in the

original EEO Complaint which arose after the Agency knew that Complainant had filed his EEO Complaint against the Agency. The acts by the Agency described in this Motion are directly related to the factual matters forming the basis for the original Complaint and are reprisal/retaliatory in nature. The actions of the Agency subject of this Motion not only occurred subsequent to the filing of the original EEO Complaint in this case, but are continuing up to the present. The acts complained of herein involve a continuing hostile work environment motivated by reprisal/retaliation and are clearly designed to deter Complainant and others from engaging in their protected EEO activity. Enclosed in support of this Motion, and incorporated fully herein by reference, is Complainant's Memorandum in Support of Motion to Amend Complaint.

DATED THIS 4<sup>th</sup> day of January 2011.

A handwritten signature in black ink, appearing to read "Peter C. Lown", written over a horizontal line.

Peter C. Lown, GA Bar #460250  
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COMPLAINANT’S BRIEF IN SUPPORT  
OF MOTION TO AMEND COMPLAINT

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## I INTRODUCTION

1. This Motion to Amend Complaint (Motion) alleges continuing harassment and attempted intimidation in the form of an ongoing and intensifying hostile work environment affected by the Agency through the conduct of multiple investigations<sup>1</sup> targeting Complainant. These multiple “inquiries” represent efforts by the Agency to discredit and intimidate the Complainant and witnesses who gave testimony adverse to the Agency in order to counter the findings of the Department of Defense (“DOD”) EEO investigator and to undermine Complainant’s case.

2. In May 2008 Complainant unknowingly became involved in a continuing conflict with Mr. Richard Tontarski (“Tontarski”), who in 2007 had been hired as the Chief, Forensic Analysis Division, USACIL. The issues with Mr. Tontarski have their roots in mid 2008 when Complainant was initially being considered for employment at the USACIL and involve conflict between the Chief of the Firearms and Toolmarks Branch of the USACIL and Mr. Tontarski over the hiring of Complainant. Complainant was hired as a Firearms and Toolmark Examiner (in training) in September 2008 and immediately faced a peculiar encounter with Mr. Tontarski. In the ensuing months Complainant was subject to multiple threats of termination in spite of superior performance in his training program. In January

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<sup>1</sup> The Agency investigators have characterized these actions as “inquiries” but have refused to produce the authorizing orders or written directives. For the purposes of this pleading the terms are used interchangeably as for all practical purposes the distinction seems meaningless.

2010, Complainant was non-selected for a permanent position in the Firearms Branch. Complainant's non-selection was decided by Mr. Tontarski who overruled the recommendation of the Selecting Official.<sup>2</sup> In February 2010, Complainant filed his Formal Complaint (EEOC No. 410-2010-00429X) alleging that Mr. Tontarski's action was racially motivated. Immediately following the DOD EEO FFC conducted in May 2010, the USACIDC embarked on a series of "inquiries" directed at Complainant and his witnesses at the FFC who gave testimony in support of Complainant and adverse to the USACIL.<sup>3</sup> After the DOD EEO investigator reported findings supporting Complainant's claim of discrimination, the USACIDC, intensified the harassment of Complainant and his witnesses in the form of multiple "inquiries" increasingly focused on Complainant.

3. As of the date of this Motion, the USACIDC has embarked on no less than five separate "inquiries" into the circumstances of the case, obviously targeting, in varying degrees, Complainant and his witnesses.<sup>4</sup> Complainant, in this Motion, complains that at least four of these investigations were unwarranted and

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<sup>2</sup> The Selecting Official had been appointed by the overseeing Civilian Personnel Operations Center (CPOC).

<sup>3</sup> USACIDC attorney, Mr. Michael Denny (Denny), the designated Agency Representative, arrived at the USACIL several days prior to the FFC and conducted an inquiry of unknown dimensions, but involving the interview of individuals scheduled to appear as witnesses at the FFC. It is not known why the Agency waited several months to look into Mr. Bell's Complaint, but this is the first known "inquiry" of the several conducted by the USACIDC in this matter.

<sup>4</sup> This does not count the DOD EEO investigation which allowed the participation of counsel for both the Complainant and the Agency. The total number of known investigations into this matter is six.

specifically intended to impinge on the EEO rights of Complainant. Because these acts occurred subsequent to the filing of his original Complaint this amendment is necessary to fully set forth the egregious conduct of the USACIDC regarding Complainant.

4. During this period of intensifying harassment and intimidation subsequent to filing his original Complaint, at least two witnesses have developed symptoms of stress related disorders and two others have resigned their positions at USACIL. One such individual, Mr. Joseph Parker (Parker), has been so adversely affected by the hostile work environment at the USACIL that he has been unable to return to work for several weeks and is in the process of seeking either a workers compensation claim or disability retirement.<sup>5</sup> Mr. Parker also filed an EEO Complaint naming Mr. Tontarski as the principle actor which he has since elected to withdraw citing health reasons (EXHIBIT A). A total of three witnesses in Complainant's case have filed EEO Complaints against the USACIL and Mr. Tontarski in particular.

## II BACKGROUND

1. Background of the USACIL - The USACIL history includes a laboratory in North Africa, then Europe (1943-96); in Japan (1948-93); and in the United States

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<sup>5</sup> In the course of several EEO investigations of USACIL allegations of hostility toward the employment of retired military such as Complainant have surfaced. See Complaint of Joseph Parker (DA Docket No. AFRTMCPH10APR02399)

(1945-Present). The one remaining laboratory at Fort Gillem, Georgia, has provided worldwide forensics support for the military services since 1983. The USACIL has been accredited by the American Society of Crime Laboratory Directors since 1985 and provides state of the art forensic examinations in the following disciplines: Drug Chemistry, Trace Evidence, Serology/DNA, Latent Prints, Questioned Documents, Imaging & Technical Services and Firearms & Toolmarks. USACIL is currently divided into two major operational divisions: The Forensic Analysis Division (FAD) and the Expeditionary Forensic Division (EFD).<sup>6</sup> The FAD employs examiners and technicians in several forensic specialties, one of which is Firearms and Toolmarks. FAD positions are permanent positions located at Fort Gillem. The EFD employs examiners and technicians in several forensic specialties, one of which is also Firearms and Toolmarks. EFD positions are term (temporary) and are subject to deployment overseas.

2. Complainant's Background - Complainant is forty-three year old black male who retired from the Atlanta Police Department with twenty-one years of service in 2008. Complainant's record of service with the Atlanta Police Department is exemplary and involved court testimony in several hundred drug and firearms related cases.

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<sup>6</sup> At the time of Complainant's initial employment the EFD was in a developmental stage and was called the Reach Back Operations Center (RBOC). For purposes of this pleading the acronym EFD will be used for both unless the distinction is significant.

### 3. The Underlying EEO Case

a. In the calendar years 2007- 2008 the USACIL was engaged in creating a unit to assist deployed US Army combat commanders known as the Reach Back Operations Center (RBOC). Issues with Mr. Tontarski first surfaced during the recruitment process with an allegation that Mr. Tontarski was involved in opposing the hiring of Mr. Bell based on race. Another senior employee and USACIL attorney, Ms. Lisa Kreeger-Norman (Kreeger-Norman) reported a conversation between the RBOC supervisor, Mr. William Doyne (Doyne), and Mr. Tontarski wherein Mr. Doyne made a derisive remark regarding the hiring of “blacks” which she believed was directed at Complainant to the management official overseeing the selection of applicants for the vacancy, Mr. Donald Mikko (Mikko).<sup>7</sup> Less than a week later Mr. Tontarski appeared in Mr. Mikko’s office, closed the door and began to question him regarding the hiring of Mr. Bell. An acrimonious confrontation ensued wherein Mr. Mikko confronted Mr. Tontarski with the allegation regarding the derisive remark regarding the hiring of a black. The confrontation ended with Mr. Tontarski departing Mr. Mikko’s office in a highly

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<sup>7</sup> Mr. Mikko holds an Associate Degree in Police Science, a Baccalaureate degree in Criminal Justice and a Masters Degree in Business Administration. Mr. Mikko, is a USACIDC Special Agent, assigned to the USACIL in August 1990 where he became a fully qualified Firearms and Toolmark Examiner. In 1995 Mr. Mikko graduated from the Federal Bureau of Investigation National Academy. Mr. Mikko was appointed Chief of the Firearms and Toolmarks Branch (GS-14) in February 2002. Mr. Mikko is a Distinguished Life Member of the Association of Firearm and Toolmark Examiners (AFTE) and is one of only four percent holding AFTE Certification. Mr. Mikko has taught Criminal Justice and Forensic Science at several colleges and is a frequent guest speaker at educational institutions, police departments, police academies, professional associations and federal law enforcement agencies.



agitated state, but never denying the allegation.<sup>8</sup>

b. Mr. Mikko persisted in supporting Complainant's selection and Complainant was hired into one of the vacant RBOC positions as a Firearms and Toolmark Examiner (trainee) in September 2008 with five others receiving their training as firearms and toolmark examiners from Mr. Mikko. The initial hiring process under the National Security Personnel System which considered prior employment of the applicant and each of the Firearms and Toolmark Examiner new hires were brought in at different rates of pay. Of the six trainee examiners hired in the fall of 2008 Complainant was the highest paid because of his prior experience with the Atlanta Police Department. Complainant was assigned to the EFD where his position was both term and deployable.<sup>9</sup> Beginning his very first day of employment and continuing up to the present, Complainant, has been subjected to objectionable conduct by certain management officials of USACIL including interrogations regarding his qualifications, remarks having racial connotations, and threats to terminate his employment without good cause.

c. In August 2009 USACIL announced a vacancy for a Firearms and Toolmark Examiner in the Firearms and Toolmark Branch of the FAD. Although the vacancy was similar to the position Complainant held at the time, the position was

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<sup>8</sup> In FFC and deposition testimony Mr. Tontarski has been unable to 'remember' either the remark or the confrontation with Mr. Mikko regarding the remark.

<sup>9</sup> Mr. Bell is currently deployed to Afghanistan.

desirable to Complainant because it was permanent and non-deployable. In the course of the selection process Complainant was determined to be the leading applicant for the vacancy by the duly appointed selection panel after another applicant, who was initially determined to be the best qualified, removed himself from consideration. Upon learning of Complainant's selection by the selection panel, Mr. Tontarski first directed the Selecting Official (Mr. Mikko) to bypass Mr. Bell and to consider the next applicant on the selection list. Upon receiving a negative recommendation regarding that second choice, Mr. Tontarski relieved Mr. Mikko of his duties as the Selecting Official and took no further action, holding the position open for about three months.<sup>10</sup> Mr. Tontarski then re-contacted the applicant who had earlier removed himself from consideration and offered him enhanced terms of employment in the form of increased compensation and a deferred reporting date. Complainant was notified of his non-selection in January 2010. The applicant, Mr. Jason Flater (Flater), who had originally removed himself from consideration was hired in April 2010. Mr. Flater has since confirmed his withdrawal from the selection process in deposition testimony (EXHIBIT B).

d. In February 2010, Complainant filed a Formal EEO Complaint and in May 2010, DOD held the recorded FFC wherein several USACIL employees gave

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<sup>10</sup> There is considerable controversy not only as to Mr. Tontarski's motives, but whether he violated government personnel regulations in bypassing Mr. Bell and then relieving the Selecting Official appointed by the servicing Central Personnel Operations Center.

testimony adverse to USACIL management which included expressing clear opinions that Complainant had in fact been discriminated against based on his race. Mr. Mikko and Ms. Kreeger-Norman were among those who so testified.<sup>11</sup> Almost immediately following the close of the FFC, the USACIDC embarked on a rash of investigations targeting Ms. Kreeger-Norman, Mr. Mikko and Complainant. In July 2007 the DOD published its Report of Investigation (ROI) finding that:

. . . management has not articulated a legitimate non-discriminatory reason for the action contested. The reason stated that the Complainant was not selected for the vacant position at issue because he was not ultimately the first choice does not withstand scrutiny and is not credible. The Complainant became the first choice of the selecting official after the original first choice candidate declined the job. The aforementioned incident would appear materially adverse to a reasonable employee. The Complainant has presented sufficient evidence to show that management's articulated reason for the action at issue is unworthy of belief.

e. Following publication of the DOD ROI the investigations by the USACIDC intensified. Multiple teams of investigators have been dispatched to USACIL from USACIDC Headquarters in Virginia purportedly to make inquiry into hiring practices at USACIL. The questions asked by these teams of USACIDC Special Agents left little doubt that the true targets of these investigations were Complainant and others who supported the Bell case.

### III BASIS FOR AMENDMENT

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<sup>11</sup> Others giving testimony adverse to USACIL management were the HR specialist, the Chief of the Documents Branch, an F&A Examiner and the Chief of the EFD.

Beginning sometime in 2007 and culminating in mid 2008 the USACIL embarked on a hiring action to employ several new hire personnel in positions at the USACIL that had been established under a temporary funding in support of the ongoing military operation in Iraq and Afghanistan. One of the applicants was Complainant. In May 2008, Ms. Kreeger-Norman, a USACIL staff attorney, related to Mr. Mikko that while on TDY at Fort Huachuca, Arizona, she had overheard an inappropriate conversation between two management officials, Mr. Doyme and Mr. Tontarski, suggesting hostility toward the hiring of a minority being considered for employment at the USACIL. The only person likely fitting the alleged remarks was Complainant, who is black. Mr. Mikko felt considerable concern regarding the ramifications of the event described by Ms. Kreeger-Norman. The following Monday Mr. Tontarski appeared at Mr. Mikko's office to make inquiry regarding the pending hiring actions, and Complainant in particular. In the course of the ensuing conversation Mr. Mikko confronted Mr. Tontarski with the allegation of the improper racial comments related by to him by Ms. Kreeger-Norman. Mr. Tontarski left Mr. Mikko's office in a high state of agitation but he failed to deny the allegation. In September 2008 Complainant was hired for one of the temporary positions. On his very first day of employment he was invited into Mr. Tontarski's office for a private conversation wherein Mr. Tontarski proceeded to interrogate him about his qualifications and to make several questionable statements regarding "diversity"

which Complainant found offensive and to have racial implications. In the ensuing months, in spite of Complainant's superior performance in his training program, Mr. Doyne, the individual alleged to have made the earlier inappropriate racial comment, repeatedly made threats to fire Mr. Bell for no apparent reason. The culmination of the hostile treatment of Complainant was his non-selection in January 2010.

In May 2010, just prior to the FFC in the Complainant's case, Mr. Denny, a USACIDC attorney and the individual designated as the Agency Representative, appeared at USACIL and conducted an "inquiry" into the Complainant's allegations. Mr. Denny's inquiry is known to involve the interview of a number of potential witnesses, but it's full scope has never been disclosed and is unknown. Following the FFC and/or the publication of the unfavorable ROI in the case by the DOD the following acts of reprisal/retaliation against Complainant and his witnesses occurred:

1. Kreeger-Norman "Inquiry" - In June 2010, following her testimony at the FFC, Ms. Kreeger-Norman was placed under investigation by the Commander, USACIDC, involving allegations that she had committed professional misconduct and "her fitness to practice law" was specifically questioned. The allegations against Ms. Kreeger-Norman were derived solely from her involvement in the Bell case, and nothing else. The investigation conducted by LTC Jeffrey Hart (LTC Hart), a

USACIDC attorney, found Ms. Kreeger-Norman guilty of no less than seven ethical violations and also that there was a “substantial question as to her fitness to practice law.” In September 2010, LTC Hart’s findings were reviewed by the Professional Responsibility Branch, Office of the Judge Advocate General, Department of the Army (DA), which concluded that “there is no credible evidence that Ms. Kreeger-Norman violated any Army Rule of Professional Conduct for Lawyers.” Copy of DA letter exonerating Ms. Kreeger-Norman attached (EXHIBIT C). Not only was the investigation of Ms. Kreeger-Norman a self serving sham, but her superiors had known of her allegation regarding the derisive racial conversation for several months and possibly longer, but they only decided to investigate her alleged misconduct after she gave sworn testimony at the FFC in Complainant’s defense. Additionally, at least one witness who was interviewed by LTC Hart has stated that LTC Hart asked numerous questions focusing on other matters in Complainant’s case, Mr. Mikko in particular. Ms. Kreeger-Norman has since resigned from her employment at the USACIL and is pursuing her own EEO Complaint against the USACIDC.

2. The Tontarski “Inquiry” - On September 2, 2010, immediately following a DOD FFC in yet another EEO Case against the USACIL and Mr. Tontarski, that of Mr. Joseph Parker (Parker), Mr. Tontarski presented Mr. Mikko and Mr. Parker with formal memoranda requiring them to provide detailed information allegedly

pertaining to Complainant's EEO case. The information requested by Mr. Tontarski imposed a significant administrative burden and did not allow sufficient time, requiring the collection of information already fully investigated in the Bell case by the official Agency Representative (Mr. Denny) and the DOD EEO investigator, and possibly LTC Hart. In later deposition testimony, Mr. Larry Chelko (Chelko) the USACIL Director, admitted that at the time he authorized Tontarski to conduct his own "inquiry" he (Chelko) had already requested an investigation of the matter by the USACIDC OIG and he knew the requested investigation was forthcoming - so what exactly was the purpose of the "inquiry" by Mr. Tontarski other than to intimidate Complainant's witnesses, both of whom had open EEO cases against Mr. Tontarski.

3. USACIDC OIG "Inquiry" - In September 2010, the Commander, USACIDC, sent a team of five or more investigators from the USACIDC Office of the Inspector General (OIG) to investigate unspecified matters at USACIL, but again clearly relating to Complainant's case. All of the known witnesses in the Complainant's case were interviewed in depth including Complainant and his witnesses. In spite of the fact that the investigators declined to state a specific purpose or formal authority for their investigation, it was obvious that they were focused on Complainant and his employment at USACIL. On September 21, 2010, Mr. Milkko was subjected to an interrogation by two USACIDC Special Agents

assigned to the OIG who stated they were conducting some unspecified “inquiry” into hiring practices at the USACIL. During his interrogation it was evident that Mr. Mikko’s support of the Complainant was the real focus of the investigation. Mr. Mikko was required to answer questions specifically directed to his actions in support of Complainant’s hiring by the USACIL.

4. 2<sup>nd</sup> USACIDC “Inquiry” - On November 10, 2010, Agency counsel, Mr. Denny, orally advised Complainant’s counsel that Mr. Mikko was now the target of an investigation ordered by the Commander, USACIDC, related to the hiring actions involving Complainant. On November 16, 2020, Mr. Denny confirmed by e-mail that Mr. Mikko was the target of an investigation and that he would be required to participate in an interview by the investigators under threat of disciplinary action (EXHIBIT D). On November 18, 2010, Mr. Mikko was subjected to more than a four hour interrogation by a Special Agent (SA) Philip McGuire of the USACIDC regarding his involvement in the initial hiring and subsequent recommendation of Mr. Bell for a permanent position. As in the previous USACIDC “inquiries,” the investigator declined to state the express purpose of the investigation prior to the interview. On November 23, 2010, Complainant was also subject to interrogation by the USACIDC Special Agent clearly targeting Complainant and Mr. Mikko (EXHIBIT E).

5. Defamation and Slander - Following his deployment to Afghanistan in



August 2010, Complainant was approached by a co-worker<sup>12</sup> who advised him that prior to his arrival in the country, Mr. William Doyne, who was serving as Chief of the USACIL mission in Afghanistan,<sup>13</sup> had made a disparaging remark regarding Complainant to USACIL personnel in Afghanistan. This individual stated that Mr. Doyne had conveyed a negative impression of Complainant with remarks such as, "there is no telling what kind of shit A. D. is going to start when he gets over here." (EXHIBIT F) Mr. Doyne had been describing Complainant to other employees at USACIL (i.e., Mr. Donald Mikko and Mr. Jerry Miller) as a "whiner" and "complainer" for some time. Apparently not content to confine these comments to personnel at the USACIL facility at Fort Gillem, Mr. Doyne who was deployed to Afghanistan in December 2009 sought to prejudice USACIL employees in Afghanistan against Complainant prior to his arrival in country. Making these comments could have no other purpose but to damage Complainant's image before supervisors and co-workers before Complainant had an opportunity to demonstrate his work ethic and competence. Such defamatory conduct by a manager is not only in and of itself is egregious, but under the circumstances could be nothing more than

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<sup>12</sup> This employee has declined to come forward voluntarily, possibly due to fear of reprisal, and is not identified herein. It is expected that this employee and possibly others will confirm Mr. Doyne's conduct at the hearing of this matter.

<sup>13</sup> Mr. Doyne is the individual alleged to have made a racial remark hostile to the hiring of Complainant in 2008, and who has since admitted to making repeated threats to fire Complainant. Now not only can Mr. Doyne's proffered explanation for making threats to fire Complainant be proven false, but his conduct in making these unsupported threats is, in and of itself, questionable conduct.

a deliberate and malicious attempt to damage Complainant's reputation and cause him harm in his vocation and occupation.

#### IV ARGUMENT

1. Basis of Amended Complaint - The Complaint in this case is one of reprisal by and through an increasingly hostile work environment in the form of harassment by investigation. There is no good reason why Mr. Denny, a USACIDC attorney and the Agency's Representative in both the Current case and the cases of Mr. Mikko and Mr. Parker, could not adequately investigate these matters, not only through the Agency's inherent authority to review its own business, but through the discovery processes available in both cases. In fact, Mr. Denny conducted numerous witness interviews prior to the FFC in the instant case and he certainly had the authority to do the same in the Mikko and Parker cases. But for some reason, the USACIDC Commander chose, rather than rely on her duly appointed Agency Representative and command attorney, to order and/or authorize no less than four additional investigations increasingly focused on Complainant and his witnesses.

2. Harassment by Investigation - In his twenty years of employment at the USACIL Mr. Mikko was involved in numerous hiring actions, either as a selection panel member or as the selecting official. On no previous occasion was there ever any concern by USACIL or USACIDC officials regarding his judgment until his support for the EEO rights of Complainant became an issue. The newfound concern

regarding Mr. Mikko's judgment escalated into multiple "inquiries" only after the DOD investigator found support for the Complainant in this case and then, ignoring the investigative authority and discovery rights of her own Agency Representative in these cases, the USACIDC Commander:

a. Ordered the investigation of Ms. Kreeger-Norman for alleged ethical violations questioning her fitness to practice law. The investigator, LTC Hart, who could not be any further from the definition of impartial, finds as expected - just what the USACIDC wanted to hear - multiple ethical violations and grounds to question her "fitness to practice law." Fortunately, the Department of the Army quickly and completely saw through the USACIDC sham "inquiry" and threw out all of LTC Hart's findings. The investigation of Ms. Kreeger-Norman presents an interesting sidelight to this case, a deliberate attack on a witness who testified regarding a prohibited EEO practice.

b. Authorized Mr. Tontarski, the central actor in at least three EEO Complaints to conduct his own investigation involving the very subordinates who had filed complaints against him. But even that was not enough, she ordered two additional investigations, one by the USACIDC OIG and the second by USACIDC criminal investigators. As of the date of this Motion, Mr. Mikko has been subject to questioning regarding his conduct in supporting the EEO rights of Mr. Bell in no less than six separate investigations (Mr. Denny, counsel and Agency Representative for

the USACIDC; the DOD EEO investigator in the Bell Case; Mr. Tontarski's just a "supervisor asking a subordinate for information;" LTC Hart's inquiry under the guise of the Kreeger-Norman inquisition; Special Agents from the USACIDC OIG investigating who-knows-what; and another Special Agent acting again under the direction of the Commander, USACIDC).

3. The USACIL Management Model - Whether related to EEO complaints or otherwise, Mr. Tontarski, in his short tenure, has effectively caused or contributed to the departure of several employees from the USACIL. Ms. Kreeger-Norman resigned, Mr. Parker is processing a medical termination citing stress at his place of employment and other employees have written letters complaining of hostile work environment at USACIL subsequent to their departure.

## V CONCLUSIONS

The message is clear and unequivocal: Don't make allegations of discrimination against the USACIDC. The USACIDC is a powerful federal law enforcement investigative agency with substantial resources. If you have the audacity to suggest that something improper, such as discrimination based on race, has taken place, you will be investigated. And if an initial investigation fails, you will be investigated again, and again, until some minor transgression is found that can be used to discredit you and possibly provide a basis for adverse action or, you get fed up and quit. The investigation of Ms. Kreeger-Norman set the stage, and

when the USACIDC's flimsy attack on Ms. Kreeger-Norman was unceremoniously thrown out by the Department of the Army, the focus of the USACIDC openly turned to Mr. Mikko and Complainant with THREE additional investigations. The USACIL Director has attempted justification by claiming that these inquisitions are merely "a supervisor asking a subordinate for information about a hiring action," and not really investigations.<sup>14</sup> Complainant presumes that the USACIDC has the right to investigate its own misconduct, but just how many bites of the apple does this federal law enforcement agency get before an invidious motive becomes apparent?

And then there is the continuing threats and slander by Mr. Doyne. Mr. Doyne and Mr. Tontarski, as would certainly be expected, deny the racial comment hostile to Complainant's initial employment. But, Mr. Doyne has continued to threaten and slander Complainant unimpeded by USACIL management. At least two USACIL employees are prepared to testify that Mr. Doyne has referred to Complainant as a "whiner" and a "complainer." Faced with irrefutable evidence that he made unsupported threats to fire Complainant, Mr. Doyne has now admitted that he did so, offering a flimsy explanation which can itself be proven false. And, most recently, Complainant, who by all measures appears to be performing his duties with distinction, following his arrival in Afghanistan, was

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<sup>14</sup> Deposition testimony of Larry Chelko at pp. 28-30 (EXHIBIT G).

informed of Mr. Doyne's deliberate effort to prejudice his co-workers yet again.

WHEREFORE, Complainant requests that his Complaint in this matter be amended as follows:

A. To include the following claims as acts of reprisal by the Agency:

1. The "inquiry" into allegations of misconduct on the part of Ms. Lisa Kreeger-Norman conducted by LTC Hart of the USACIDC.

2. The "inquiry" into the EEO Complaint conducted by Mr. Tontarski and authorized by Mr. Chelko of the USACIL.


3. The "inquiry" into the EEO Complaint conducted by Special Agents of the USACIDC OIG in September 2010.

4. The "inquiry" into the EEO Complaint of Mr. Albert Bell conducted by Special Agents of the USACIDC in November 2010.

5. Ongoing defamation and slander by Mr. William Doyne whose conduct toward Complainant is known to the USACIL Director and has been allowed to continue unchecked.

B. Reopening discovery for a period of ninety days so that Complainant may conduct discovery relative to these additional claims.

DATED THIS 4<sup>th</sup> day of January 2011.

A handwritten signature in black ink, appearing to read 'Peter C. Lown', is written over a horizontal line.

Peter C. Lown, GA Bar #460250  
Attorney for Complainant

## CERTIFICATE OF SERVICE

I hereby certify that the foregoing MOTION TO AMEND COMPLAINT has been served by United States Mail and by facsimile or e-mail (where indicated) upon the following parties at the addresses and facsimile numbers shown below:

Honorable Philip Davi  
Supervisory Administrative Judge  
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DATED THIS 4<sup>th</sup> day of January 2011.

A handwritten signature in black ink, appearing to read "Peter C. Lown", is written over a horizontal line.

Peter C. Lown